

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EDWARD KING,

Plaintiff,

vs.

KAYE ADKINS, ROBERT HERZOG,
ARCHIE GRANT, MICHAEL
GUZMAN, and PEGGY SMET.

Defendants.

NO. CV-06-105-RHW

ORDER DISMISSING FIRST AMENDED
COMPLAINT WITH PREJUDICE

1915(g)

BEFORE THE COURT is Plaintiff's First Amended Complaint, filed September 5, 2006. After review of Plaintiff's submissions, the court finds he has failed to cure the deficiencies of his initial complaint. Plaintiff asserts he was falsely accused of fraud and then denied due process at his disciplinary proceedings and subsequent appeals. As a result, Plaintiff complains he is unable to pursue his religious obligation to educate himself. He seeks expungement of his disciplinary record and unspecified monetary damages.

As previously advised, an inmate has no constitutional right against being falsely accused of conduct. *See Freeman v. Rideout*, 808 F.2d 949, 951 (2d Cir. 1986), *cert. denied*, 485 U.S. 982 (1988). Under *Sandin v. Conner*, 515 U.S. 472 (1995), Plaintiff has failed to

1 demonstrate the imposition of a prison restraint constituting
2 "atypical and significant hardship on the inmate in relation to his
3 ordinary incidents of prison life." *Sandin*, at 483-84. The loss of
4 educational opportunities, even when they affect Plaintiff's duty to
5 educate and develop his "intellectual and moral reasoning," does not
6 rise to the level of a constitutional violation.

7 Plaintiff complains, as a result of the infraction and conviction
8 for fraud, he is not able to practice his religious duty to be "an
9 effective witness to the truth." Again, these assertions do not rise
10 to the level of an "atypical and significant hardship" invoking due
11 process protections under *Sandin*.

12 The indirect impact of a prison disciplinary procedure on
13 Plaintiff's religious practices does not implicate the Religious Land
14 Use and Institutionalized Persons Act ("RLUIPA") or the First
15 Amendment. *See Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005) (RLUIPA
16 does not elevate accommodation of religious observances over a
17 prison's need to maintain order and safety). While "[s]ome
18 administrative actions will inevitably make prisoners feel cheated;
19 nevertheless, this does not give them a federal cause of action."
20 *Grayson v. Rison*, 945 F.2d 1064, 1067 (9th Cir. 1991).

21 For the reasons set forth above and in the court's prior Order to
22 Amend or Voluntarily Dismiss, **IT IS ORDERED** the First Amended
23 Complaint (Ct. Rec. 9) is **DISMISSED with prejudice** for failure to
24 state a claim upon which relief may be granted. 28 U.S.C. §§
25 1915(e)(2) and 1915A(b)(1).

26 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a
27
28 ORDER DISMISSING FIRST AMENDED COMPLAINT WITH PREJUDICE -- 2

1 prisoner who brings three or more civil actions or appeals which are
2 dismissed as frivolous or for failure to state a claim will be
3 precluded from bringing any other civil action or appeal *in forma*
4 *pauperis* "unless the prisoner is under imminent danger of serious
5 physical injury." 28 U.S.C. § 1915(g). Plaintiff is advised to read
6 the new statutory provisions under 28 U.S.C. § 1915. This dismissal
7 of Plaintiff's complaint may count as one of the three dismissals
8 allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to
9 file future claims.

10 **IT IS SO ORDERED.** The District Court Executive is directed to
11 enter this Order, forward a copy to Plaintiff at his last known
12 address, enter judgment, and close the file. The District Court
13 Executive is further directed to forward a copy of this Order to the
14 Office of the Attorney General of Washington, Criminal Justice
15 Division.

16 **DATED** this 7th day of November 2006.

17 s/ Robert H. Whaley

18 ROBERT H. WHALEY
19 CHIEF UNITED STATES DISTRICT JUDGE

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